

SECOND REGULAR SESSION

HOUSE BILL NO. 2156

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KREIDER.

Read 1st time March 12, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5034L.011

AN ACT

To repeal sections 407.020 and 407.1076, RSMo, and to enact in lieu thereof two new sections relating to merchandising practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 407.020 and 407.1076, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 407.020 and 407.1076, to read as follows:

407.020. 1. The act, use or employment by any person of any deception, fraud, false
2 pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or
3 omission of any material fact in connection with the sale or advertisement of any merchandise
4 in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in
5 section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. **The**
6 **advertisement of or causing to be listed in a telephone directory any assumed or fictitious**
7 **business name that intentionally misrepresents where the business is actually located or**
8 **that it is operating in the area covered by the telephone directory, or the use of a Missouri**
9 **or toll-free telephone number that does not disclose the call will be transferred to a**
10 **business location outside this state, is declared to be an unlawful practice.** The use by any
11 person, in connection with the sale or advertisement of any merchandise in trade or commerce
12 or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or
13 from the state of Missouri of the fact that the attorney general has approved any filing required
14 by this chapter as the approval, sanction or endorsement of any activity, project or action of such
15 person, is declared to be an unlawful practice. Any act, use or employment declared unlawful
16 by this subsection violates this subsection whether committed before, during or after the sale,

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 advertisement or solicitation.

18 2. Nothing contained in this section shall apply to:

19 (1) The owner or publisher of any newspaper, magazine, publication or printed matter
20 wherein such advertisement appears, or the owner or operator of a radio or television station
21 which disseminates such advertisement when the owner, publisher or operator has no knowledge
22 of the intent, design or purpose of the advertiser; or

23 (2) Any institution or company that is under the direction and supervision of the director
24 of the department of insurance, director of the division of credit unions, or director of the
25 division of finance, unless the directors of such divisions specifically authorize the attorney
26 general to implement the powers of this chapter or such powers are provided to either the
27 attorney general or a private citizen by statute.

28 3. Any person who willfully and knowingly engages in any act, use, employment or
29 practice declared to be unlawful by this section with the intent to defraud shall be guilty of a
30 class D felony.

31 4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective
32 jurisdictions to commence any criminal actions under this section, and the attorney general shall
33 have concurrent original jurisdiction to commence such criminal actions throughout the state
34 where such violations have occurred.

35 5. It shall be an unlawful practice for any long-term care facility, as defined in section
36 660.600, RSMo, except a facility which is a residential care facility I or a residential care facility
37 II, as defined in section 198.006, RSMo, which makes, either orally or in writing, representation
38 to residents, prospective residents, their families or representatives regarding the quality of care
39 provided, or systems or methods utilized for assurance or maintenance of standards of care to
40 refuse to provide copies of documents which reflect the facility's evaluation of the quality of
41 care, except that the facility may remove information that would allow identification of any
42 resident. If the facility is requested to provide any copies, a reasonable amount, as established
43 by departmental rule, may be charged.

44 6. Any long-term care facility, as defined in section 660.600, RSMo, which commits an
45 unlawful practice under this section shall be liable for damages in a civil action of up to one
46 thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing
47 plaintiff, as allowed by the circuit court.

407.1076. It is an unlawful telemarketing act or practice for any seller or telemarketer
2 to engage in the following conduct:

3 (1) Misrepresent any material fact required pursuant to section 407.1073. It is a defense
4 to this subdivision if a seller or telemarketer shows, by a preponderance of the evidence, that the
5 misrepresentation resulted from a bona fide error notwithstanding the maintenance of procedures

6 reasonably adopted to avoid the error, and no civil penalties shall be imposed if this defense is
7 met;

8 (2) Threaten, intimidate or use profane or obscene language;

9 (3) Cause the telephone to ring or engage any consumer in telephone conversation
10 repeatedly or continuously in a manner a reasonable consumer would deem to be annoying,
11 abusive or harassing;

12 (4) Knowingly and willfully initiate a telemarketing call to a consumer, or transfer or
13 make available to others for telemarketing purposes a consumer's telephone number when that
14 consumer has stated previously that he or she does not wish to receive solicitation calls by or on
15 behalf of the seller unless such request has been rescinded;

16 (5) Engage in telemarketing to a consumer's residence at any time other than between
17 8:00 a.m. and 9:00 p.m. local time at the called consumer's location;

18 (6) Request or receive payment in advance to remove derogatory information from or
19 improve a consumer's credit history, credit record or credit rating;

20 (7) Request or receive payment in advance from a consumer to recover or otherwise aid
21 in the return of money or any other item lost by the consumer in a prior telemarketing
22 transaction, except that this provision shall not apply to services provided by a licensed attorney;

23 (8) Obtain or submit for payment a check, draft or other form of negotiable paper drawn
24 on a consumer's checking, savings, share or similar account without the consumer's express
25 written or oral authorization. Such authorization shall be deemed verifiable if any of the
26 following means are employed:

27 (a) Express written authorization by the consumer, which may include the consumer's
28 signature on the negotiable instrument;

29 (b) Express oral authorization which is tape-recorded and made available upon request
30 to the consumer's bank and which evidences clearly both the consumer's authorization of
31 payment for the merchandise that is the subject of the sales offer and the consumer's receipt of
32 all of the following information:

33 a. The date of the draft or drafts;

34 b. The amount of the draft or drafts;

35 c. The payor's name;

36 d. The number of draft payments;

37 e. A telephone number for consumer inquiry that is answered during normal business
38 hours; and

39 f. The date of the consumer's oral authorization; or

40 (c) Written confirmation of the transaction, sent to the consumer prior to submission for
41 payment of the consumer's check, draft or other form of negotiable paper, which shall include:

42 a. All of the information contained in paragraph (b) of this subdivision; and

43 b. The procedures by which the consumer can obtain a refund from the seller or
44 telemarketer in the event that the confirmation is inaccurate;

45 (9) Procure the services of any professional delivery, courier or other pick-up service to
46 obtain immediate receipt or possession of a consumer's payment, unless the merchandise or
47 investment opportunity is delivered with the opportunity to inspect before any payment is
48 collected;

49 (10) Knowingly provide assistance or support to any telemarketer when that person
50 knows or consciously avoids knowing that the telemarketer is engaged in any act in violation of
51 sections 407.1070 to 407.1085; [or]

52 (11) Knowingly utilize any method to block or otherwise circumvent a consumer's use
53 of a caller identification service; **or**

54 **(12) Knowingly advertise or cause to be listed in a telephone directory any assumed**
55 **or fictitious business name that intentionally misrepresents where the business is actually**
56 **located or that it is operating in the area covered by the telephone directory, or the use of**
57 **a Missouri or toll-free telephone number that does not disclose the call will be transferred**
58 **to a business location outside this state.**